

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:20-CV-160-FL

DARCY VONDERGATHEN and ANDRE )  
GLOVER, on behalf of themselves and all )  
others similarly situated, )  
Plaintiffs, )  
v. ) ORDER  
FM JANITORIAL SERVICES, INC. #2; )  
JOSE RODRIGUEZ; and MARIA JOYA, )  
Defendants. )

This matter is before the court on notice by mediator M. Ann Anderson that the parties have settled their dispute and on indication by plaintiffs' counsel of intent to file joint stipulation of dismissal of plaintiffs' claims with prejudice, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

Rule 41(a)(1)(A) allows a plaintiff to "dismiss an action without a court order" through certain filings but does so "[s]ubject to . . . any applicable federal statute." Fed. R. Civ. P. 41(a)(1)(A). As applicable here, the Fair Labor Standards Act ("FLSA") imposes "a judicial prohibition against the unsupervised waiver or settlement of claims." Taylor v. Progress Energy, Inc., 493 F.3d 454, 460 (4th Cir. 2007), superseded on other grounds by regulation, 29 C.F.R. § 825.220 (2009). Accordingly, "Rule 41(a)(1)(A)(ii) stipulated dismissals settling FLSA claims with prejudice require the approval of the district court or the [Department of Labor] to take effect." Cheeks v. Freeport Pancake House, Inc., 796 F.3d 199, 206 (2d Cir. 2015).

Here, plaintiffs' counsel's communication with the clerk and the report of the mediator indicate that the parties have reached a settlement of their dispute, to be encapsulated in a fully executed settlement agreement, and that they anticipate filing a stipulation of dismissal with prejudice shortly after that agreement is signed.

Therefore, in order for the court to make the requisite approval determination and close this case, the parties are DIRECTED to file a joint consent motion for court approval of their settlement within **21 days** of execution of the settlement agreement. The parties are DIRECTED to include in their joint motion sufficient description of the terms of the settlement agreement to enable the court to make requisite findings whether settlement in the instant case is a fair and reasonable resolution of a bona fide FLSA dispute. The parties are also DIRECTED to include a proposed approval order. Thereupon, the court will enter such further order as is warranted regarding settlement approval and closure of the case.

SO ORDERED, this the 1st day of December, 2021.



---

LOUISE W. FLANAGAN  
United States District Judge